

In the result the plaintiff succeeds in his action and there will be judgment for the plaintiff with costs. There will be an order for possession as prayed for. No evidence has been led on the question of damages but the defendant should pay the plaintiff \$30 per month as from the 1st January, 1965, until possession is given to the plaintiff and I make an order accordingly.

Judgment for the plaintiff.

Solicitors: *Mallal & Namazie; Chor Pee & Hin Hiong.*

Re Application of FOONG JAM KEONG

[O.C.J. (Chua J.) May 14, 1967]

[Singapore — Originating Motion Nos. 75 & 76 of 1966]

Contempt of Court — Comments prejudicial to applicant in a pending criminal trial — Statement by Minister to newspaper — Editorial comment by newspaper — Prevailing circumstances — Time of disorder and lawlessness — Public interest.

On the night of October 22, 1966 at a variety concert at the Gay World certain persons clashed with the police. The police opened fire and some persons which included the applicant were wounded. He was taken to the hospital and was arrested on the morning of October 23, 1966. On October 24, 1966 the applicant and others were charged in the magistrate's court under sections 148 and 332 of the Penal Code. On October 25, 1966 the *Straits Times* contained a report headed "18 people accused of rioting in Singapore". The report stated that 13 people were charged in the magistrate's court being members of unlawful assemblies, rioting and causing hurt to police officers and that 5 others were charged with the same offences in the General Hospital by a magistrate and that they all pleaded guilty. The report went on to say that "in the court 6 men faced a charge of being members of an lawful assembly about 8.45 p.m. on Saturday at the Gay World amusement park and causing hurt to Inspector Ong Eng Say and a party of police officers thereby committing an offence of rioting while armed with chairs, bottles and wooden poles. They also faced a charge of causing hurt to Inspector Ong and his party in the discharge of their duties." The names of these 6 men included the name of the applicant. On the front page of the same issue of *The Straits Times* the headlines were "We'll clobber you properly if . . .", "Trouble makers get a warning." The article stated *inter alia*:—

"The Minister for the Interior and Defence Dr. Goh Keng Swee today warned Barisan Socialis supporters that they would be 'clobbered properly' if they continued their lawlessness. He was speaking at the General Hospital this afternoon, after visiting police constable Chin Poh Chin, 21, who is in hospital with a fractured skull after being clubbed by a mob of party-backed demonstrators at Tiwary Street last night. He said 'I do not think we can tolerate lawlessness of this kind. Those responsible will have to bear the consequences. If there is any more of this business, we are going to clobber them properly'." "Asked to comment on Saturday night's shooting at the Gay World in which 10 Barisan men were wounded, he said: 'The police shot in self-defence. There was only a small party of them, and they were concerned by a crowd of about 100'." "The police statement said: 'Following the refusal by the organisers of the variety show sponsored jointly by the Barisan Socialis and Partai

Rakyat at the Gay World stadium to admit police officers on Saturday, and the subsequent attack on these officers by the supporters, the licence to hold the show was cancelled yesterday'."

The applicant also objected to a statement issued to the press by the Minister of the Interior and Defence on October 25, 1966 and to the editorial appearing in the same issue headed "Warning Signs."

The criminal case against the applicant was transferred for trial to the First Criminal District Court and April 10, 1967 was fixed for the commencement of the trial. On December 12, 1966 the applicant applied for and the High Court granted the applicant leave to make an application to issue a writ of attachment against the respondent for their alleged contempt of the First Criminal District Court. Pursuant to such leave the applicant filed the present motions for the exercise of the summary jurisdiction the court possessed in cases of contempt, the contempt alleged being the making and publishing of comments prejudicial to the applicant in a pending criminal trial.

Held: (1) there was no doubt that the statement made by the Minister to the *Straits Times* reporter was made in reference to the Gay World incident but the reference was to what the police did at the gathering. The statement was far too general in character to refer directly to the charges against the applicant. There was nothing in the statement which could be said to interfere or tended to interfere with the course of justice;

(2) as to the ministerial statement, it was concerned with a number of incidents in several parts of Singapore which took the form of illegal street demonstrations and which culminated in the Gay World incident. There was no reference either directly or indirectly to the applicant or to any of the persons who were charged in court or to any pending criminal proceedings;

(3) as to the editorial, it was a generally worded observation and a very appropriate observation to make in a time of disorder. There was no reference to the charge against the applicant nor was he named. There was therefore nothing in the editorial which could be said to interfere or tend to interfere with the course of justice.

Per Curiam: "Now all these lawlessness were certainly matters of grave public interest and concern and the Government owed a high duty to the public to keep it informed. In my view the Minister responsible for keeping law and order would be failing in his duty to the public if he had not made some comment on the incidents, for otherwise there might be public apprehension that there was some truth in the "bloodbath" statement made by the Barisan Socialis. I am of the view that this statement was not calculated to prejudice the fair trial of the applicant."

Cases referred to:—

- (1) *In re Clements; The Republic of Costa Rica v. Erlanger* (1877), 46 L.J. Ch. 375.
- (2) *Ex part Gaskell & Chambers Ltd.* [1936] 2 K.B. 595.
- (3) *R. v. Parke* [1903] 2 K.B. 432.
- (4) *R. v. Payne & Cooper* [1896] 1 Q.B. 577.

I ORIGINATING MOTION.

T. T. Rajah for the applicant.

Francis T. Seow (Ag. Solicitor-General)
(*Ho Kian Ping* with him) for the Minister.

Graham S. Hill for the *Straits Times Press*
(*M.*) Ltd.

Cur. Adv. Vult.

Chua J.: These are two motions by Foong Jam Keong to the court for the exercise of the summary jurisdiction it possesses in cases of contempt. The particular contempt alleged being the making and publishing of comments prejudicial to the applicant in a pending criminal trial. The persons against whom these applications are directed are Dr. Goh Keng Swee, the Minister of the Interior and Defence and the Straits Times Press (Malaya) Ltd., the proprietors and publishers of the *Straits Times* newspaper.

The circumstances which give rise to these applications are shortly these. On the night of the 22nd October, 1966, at a variety concert at the Gay World Stadium certain persons clashed with the police. The police opened fire and some persons were wounded. The applicant was one of the persons wounded. He was taken to hospital and in the early hours of the morning of the 23rd October he was arrested. On the 24th October the applicant and some others were charged in the magistrate's court under section 148 and section 332 of the Penal Code. On the 25th October there appeared on page 9 of the *Straits Times* a report of the proceedings in the magistrate's court, (Ex. F.J.K.1). The report was headed "18 people accused of rioting in Singapore." It was reported that thirteen people were charged in a magistrate's court on Monday the 24th October with being members of unlawful assemblies, rioting and causing hurt to police officers on the night of 21st October and on 22nd October and that five others were charged with the same offences in the General Hospital by a magistrate and that they all pleaded guilty. The report went on to say that:—

"In the court six men faced a charge of being members of an unlawful assembly about 8.45 p.m. on Saturday at the Gay World amusement park and causing hurt to Inspector Ong Eng Say and a party of police officers thereby committing an offence of rioting while armed with chairs, bottles and wooden poles. They also faced a charge of causing hurt to Inspector Ong and his party in the discharge of their duties."

The names of these six men were published which included the name "Foong Jam Keong". (There is no dispute that this person was the applicant). The names of the three other men who were in the General Hospital and who faced similar charges were also published. It was further reported (1) that three men and a girl were charged with "being members of an unlawful assembly at Eu Tong Sen Street, New Bridge Road and Pagoda Street about 8.20 p.m. last night and assaulting and causing hurt to police officers"; (2) that three men were charged with "being members of an unlawful assembly and rioting while armed with bottles and chairs about 8 p.m. last night at the junction of Arab Street, Victoria Street and causing hurt to police

A constable Chin Poh Chin"; and (3) that two men were charged in the General Hospital with "being members of an unlawful assembly about 8.10 o'clock last night at Tiwari Street and Rochore Canal Road and causing hurt to Inspector Mohamed bin Abdul Manap and a party of police officers thereby committing an offence of rioting while armed with bottles and stones."

On the front page of the same issue of the *Straits Times* there appeared an article written by Yeo Toon Joo, a reporter of the *Straits Times* dated Monday 24th October, (Ex. F.J.K.2). The headlines were "We'll clobber you properly if . . ."; "Trouble makers get a warning." It is unnecessary to read in full the article, but it stated, *inter alia*, as follows:—

"The Minister for the Interior and Defence Dr. Goh Keng Swee today warned Barisan Sosialis supporters that they would be 'clobbered properly' if they continued their lawlessness. He was speaking at the General Hospital this afternoon, after visiting police constable Chin Poh Chin, 21, who is in hospital with a fractured skull after being clubbed by a mob of party-backed demonstrators at Tiwari Street last night. He said 'I do not think we can tolerate lawlessness of this kind. Those responsible will have to bear the consequences. If there is any more of this business, we are going to clobber them properly.'" "Asked to comment on Saturday night's shooting at the Gay World in which 10 Barisan men were wounded, he said: 'The police shot in self-defence. There was only a small party of them, and they were cornered by a crowd or about 100'". "The police statement said: 'Following the refusal by the organisers of the variety show sponsored jointly by the Barisan Sosialis and Partai Rakyat at the Gay World Stadium to admit police officers on Saturday, and the subsequent attack on these officers by the supporters, the licence to hold the show was cancelled yesterday.'"

The article then went on to give the five incidents of illegal demonstrations listed by the police which took place in various parts of the town and Geylang on the night of Sunday the 23rd October.

On Wednesday the 26th October, the *Straits Times* published a statement issued to the Press by the Ministry of Interior and Defence on Tuesday the 25th October (Ex. F.J.K.4). It is unnecessary to read out the statement in full. The part objected to by the applicant as being prejudicial to him in the conduct of his defence on the charges which were pending against him reads as follows:—

"On October 21, two Customs officers were prevented by the 'ushers' — actually strong-arm boys — from checking on one of their 'ticket collectors' who had allowed admission to certain spectators on the strength of so-called donation tickets.

Customs checking is a routine practice to ensure there is no evasion of entertainment duty.

While this was going on, the crowd inside the stadium became unruly and some of them shouted 'pak' ('beat').

The police had to intervene to save the Customs officers from assault, and assisted in apprehending one of the officials for obstructing the customs officers in carrying out their duties.

On October 22, at the third concert at about 8.35

p.m., a police inspector and two policemen who had just gained entry into the stadium in connection with their duties, were stopped by about 20 of the 'ushers'.

Despite the fact that the police personnel produced their warrant cards to identify themselves, they were manhandled and bodily pushed out of the gate.

They were also punched from behind, and the inspector had to draw his revolver to prevent the unruly crowd from further attacking him, but he did not open fire.

Police presence at the meetings was routine and had not hitherto been resisted.

The same mob then turned their hostility towards another inspector and a police constable who were inside the stadium. They surrounded the two police personnel and ordered them to get out.

Although the inspector identified himself and explained his presence, he was attacked and set upon by the mob. Other policemen on duty nearby, who came to the inspector's rescue, were also set upon.

Bottles, stones and chairs were used to attack policemen. Heavily outnumbered, the policemen retreated. Instead of allowing them to leave, the mob advanced on them and continued to attack. The policemen had no alternative but to open fire in self-defence. The police fired several warning shots in the air, and when this did not stop the mob from advancing, the police had to direct their fire at the mob.

"Our policemen are trained to fire in such a manner as to avoid inflicting fatal or serious injury, and none of the persons hit sustained serious injury," said the Ministry.

The Ministry added: "It is evident that this collision with the police was deliberately contrived to whip up the feelings of party supporters for the party's militant line, on the one hand, and on the other to discredit the Government.

"The organisers were fully aware that one of the conditions of the licence was to allow free access to police and Customs personnel into the show in connection with their duties, and yet they deliberately obstructed and manhandled these officers. This was meant as the signal for the beginning of more violent action against the police."

In the same issue of the *Straits Times* there appeared an editorial headed "Warning Signs" (Ex. F.J.K.3). The passages in the editorial objected to by the applicant read:—

"The clash between police and Barisan Sosialis supporters at a Vietnam rally in Singapore over the week-end, is rich in cautionary lessons." "Five policemen were injured, one of them seriously, when people at the rally refused to allow officers in plain clothes to enter the hall and then turned on them menacingly. The police had to use their guns in self-defence, wounding 10 of their attackers." "If there is any more of this business, the Minister said, giving colloquial emphasis to his warning, 'We will clobber them (the agitators) properly'. The question is whether the Government should permit public meetings to be organised by men it has every reason to believe intend to turn them into riots."

The criminal case against the applicant and the other accused was transferred for trial to the First Criminal District Court and the 10th April, 1967, was fixed for the commencement of the trial.

On the 12th December, 1966, the applicant applied for and on the 16th December, 1966, the

A High Court granted the applicant leave to make an application to issue a writ of attachment against the respondents for their alleged contempt of the First Criminal District Court. Pursuant to such leave the applicant filed the present motions.

B On the 10th April, 1967, the case against the applicant was transferred from the First Criminal District Court to the Second Criminal District Court and on the same day the 17th April, 1967, was fixed for the hearing of the case. On the 17th April, 1967, the prosecution withdrew the case against the applicant and the other accused and they were discharged amounting to an acquittal.

C Before I come to deal with the question as to what matter constitutes a contempt of court, I think it is well to bear in mind the duty of the court in such matters. The power of the court to attach or commit for contempt being practically arbitrary and unlimited should be most jealously and carefully watched and exercised with the greatest caution. (*In Re Clements; The Republic of Costa Rica v. Erlanger* ⁽¹⁾). In *Ex parte Gaskell & Chambers Ltd.*, ⁽²⁾ Goddard J. said (at p. 603):—

E "The jurisdiction sought to be invoked in this case is a jurisdiction which it is very necessary that the court should possess both for the vindication of its own authority and for the protection of the litigants who may come before it. On the other hand it is a jurisdiction the exercise of which may deprive the subject of his liberty without the intervention of a jury, and in circumstances in which there is no appeal. It is therefore a jurisdiction to be used with circumspection and only to be invoked for grave and serious reasons and on real and substantial grounds."

F Now, when does an article or statement published in a newspaper commenting on a pending proceeding amount to contempt? In *R. v. Parke*, ⁽³⁾ Wills J. who delivered the judgment of the court, said (at p. 436):—

G "The reason why the publication of articles like those with which we have to deal is treated as a contempt of court is because their tendency and sometimes their object is to deprive the court of the power of doing that which is the end for which it exists — namely to administer justice duly, impartially, and with reference solely to the facts judicially brought before it. Their tendency is to reduce the court which has to try the case to impotence, so far as the effectual elimination of prejudice and prepossession is concerned."

H It has been emphasised in a number of cases that the summary jurisdiction ought to be exercised only in clear cases. In *R. v. Payne & Cooper*, ⁽⁴⁾ Lord Russell C.J. said (at p. 580):—

I "I wish to express the view which I entertain, that applications of this nature have in many cases gone too far. No doubt the power which the court possesses in such cases is a salutary power, and it ought to be exercised in cases where there is real contempt, but only where there are serious grounds for its exercise. Every libel on a person about to be tried is not necessarily a contempt of court; but the applicant must shew that something has been published which either

is clearly intended, or at least is calculated, to prejudice a trial which is pending."

In the same case, Wright J. said (at p. 581) :—

"I agree with all that the Lord Chief Justice has said, and I only wish to add that, in my opinion, in order to justify an application to the court the publication complained of must be calculated really to interfere with a fair trial, and, if this is not the case, the question does not arise whether the publication is so objectionable in its terms as to call for the interference of the court. If the publication is found likely to interfere with a fair trial, a second question arises, whether, under the circumstances of the case, the jurisdiction which the court in that case possesses ought to be exercised, not so much for punishment as for preventing similar conduct in the future. That is the rule which I wish to adopt with regard to applications of this nature."

Accordingly, the question in every case is whether, in all the circumstances existing at the date of publication, including the content and form of the article, the circulation of the paper in which it appears and the state of the proceedings, the article was intended or calculated to prejudice the fair hearing of the proceedings.

In this case there is no suggestion, and indeed there is no evidence, that the respondents intended to prejudice the fair hearing of the proceedings against the applicant. The sole question therefore is whether the statements and articles complained of are, under all the surrounding circumstances, calculated really to interfere with the fair trial of the applicant.

Let us now examine the statements and articles. First, the statement made by the Minister to the *Straits Times* reporter. There is no doubt that it was made in reference to the Gay World incident but the reference was to what the police did at the gathering. The statement was far too general in character to refer directly to the charges against the applicant. In my view there was nothing in it which could be said to interfere or tended to interfere with the course of justice.

Second, the ministerial statement. This statement was concerned with certain disruptive movements and forces in the State and the lawlessness that had taken place. Not only did the statement refer to the Gay World incident but also to other incidents which took place prior to the 22nd October, 1966. There had been a number of incidents in several parts of Singapore for two days which took the form of illegal street demonstrations and which culminated in the Gay World incident. There was no reference either directly or indirectly to the applicant or to any of the persons who were charged in court or to any pending criminal proceedings. It is true that the phrase "strong arm boys" was used but there was no insinuation that the applicant was one of them. The statement also mentioned that the Barisan Sosialis in a press statement on the 23rd October, 1966, described the Gay World incident as "the start of a blood-bath" and said

A that "the blood-debt must be paid." Now all these lawlessness were certainly matters of grave public interest and concern and the Government owed a high duty to the public to keep it informed. In my view the Minister responsible for keeping law and order would be failing in his duty to the public if he had not made some comment on the incidents, for otherwise there might be public apprehension that there was some truth in the "blood-bath" statement made by the Barisan Sosialis. I am of the view that this statement was not calculated to prejudice the fair trial of the applicant.

C Third, the editorial. The facts in it came out of the ministerial statement. The comment was that the Government would not allow disturbances of this type to take place. This was certainly a generally-worded observation and a very appropriate observation to make in a time of disorder. There was no reference to the charges against the applicant nor was he named. D Here again I can see nothing in the editorial which can be said to interfere or tend to interfere with the course of justice.

For these reasons I have come to the conclusion that the statements and articles did not constitute a contempt of court.

E The motions are dismissed with costs.

Motions dismissed.

TEE THAN SONG CONSTRUCTION CO. LTD. v. KWONG KUM SUN GLASS MERCHANT

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) July 4, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 20 of 1967]

G *Practice and Procedure — Summary judgment — Appeal against — Order whether final or interlocutory — R.S.C. 1934, O. XIV — Courts of Judicature Act, 1964, s. 68(2).*

H I The respondents brought an action against the appellants by a specially indorsed writ for work done and materials supplied. They applied for summary judgment under O. XIV and the application was heard by the registrar who made an order giving them leave to enter final judgment for the sum claimed. The appellants appealed and Choor Singh J. who heard the appeal in chambers made an order dismissing it. The appellants then applied *ex parte* by way of summons in chambers to the High Court for leave to appeal to the Federal Court and Buttrose J. who heard the application granted it. The appellants served the respondents' solicitors with a copy of the notice of appeal to the Federal Court. This being the first intimation that the respondents had of the order made by Buttrose J., they applied by way of summons in chambers to set the order aside. Their application was heard by Buttrose J. who after hearing the solicitors for both parties made an order setting aside his previous order on the ground that he had no jurisdiction to make the earlier order. The sole question before the Federal Court was whether the order of Choor Singh J. was an "interlocutory order" within the meaning of section 68(2) of the Courts of Judicature Act.